IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3255 OF 2005

Santosh Bhau Homane ..Applicant

Vs.

State of Maharashtra ..Respondent

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Ms.Anamika Malhotra Amicus Curiae for Applicant
Mr.Y.S.Shinde A.P.P. for State

...

CORAM: A.M.KHANWILKAR,J.
DATE : DECEMBER 8, 2005

P.C.

1. Heard the counsel for the parties.

2. Rule. Rule made returnable forthwith by consent as short question is involved. Mr.Shinde, A.P.P. waives notice for the State.

3. This application is filed through jail. The relief claimed in this application is essentially to provide for set off to the applicant which request was declined by the Sessions Court, Thane by its order dated 22.4.2002 in Sessions Case No.252 of 1997. The applicant is not seeking any other relief except to contend that the applicant

was entitled for relief of set off in terms of Section 428 of Cr.P.C. The Sessions Court has rejected that contention on the reasoning that the applicant has been awarded life sentence and set off cannot be provided in such cases. This is the limited controversy in the present application. Counsel for the applicant, the learned Amicus curiae appointed by the Court, has placed reliance on the decision of the Constitution Bench of the Apex Court in the case of **Bhagirath Vs. Delhi Administration, reported in (1985) 2 S.C.C. 580,** which took the view that the provisions of Section 428 of Cr.P.C. will apply even to cases wherein the accused have been ordered to undergo life imprisonment. Mr.Shinde, the learned A.P.P. on the other hand, has relied on the recent decision of two Judges Bench of the Apex Court in the case of **Mohd. Munna Vs. Union of India, reported in 2005 AIR SCW 4524,** to contend that imprisonment for life means rigorous imprisonment for life and for which reason, the question of providing set off by invoking Section 428 of Cr.P.C., does not arise.

4. Having considered the rival submissions, I have no hesitation in allowing this application relying on the exposition of the Apex Court in the

Constitution Bench decision in **Bhagirath's case (supra)**. This is a direct judgment on the point in issue. The decision pressed into service by the learned A.P.P. in the case of **Mohd. Munna's case (supra)**, is not the authority on the question that arises for my consideration. The general observations regarding the nature of punishment of imprisonment for life in the said decision, cannot be the basis to hold that Section 428 of the Code is unavailable to an accused who has been convicted and ordered to undergo sentence of life imprisonment.

5. Accordingly, this application ought to succeed. It is accordingly ordered that the applicant will have to be provided set off in terms of Section 428 of Cr.P.C., the order of imprisonment for life notwithstanding.

6. The Court expresses word of gratitude to the learned advocate for the applicant who has rendered able assistance as amicus curiae. Copy of this order be sent to the Applicant as the present application is filed through jail.

[A.M.KHANWILKAR, J.]